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Before the

**FEDERAL COMMUNICATIONS COMMISSION**

Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of

Amendment of Section 73.202(b)  
Table of Allotments  
FM Broadcast Stations  
(Rosendale, New York)

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MM Docket No. 93-17  
RM-8170

To: The Commission

**REPLY**

State University of New York ("SUNY"), by its counsel, submits this Reply to the "Opposition to Petition for Reconsideration" filed by Sacred Heart University ("SHU") in the referenced matter. On August 1, 1997, SUNY requested reconsideration of the Memorandum Opinion and Order in MM Docket No. 93-17, RM-8170 (July 2, 1997) ("MO&O"), insofar as the Commission upheld a decision of the Staff not to modify the license of SUNY's station WFNP, Rosendale, New York, to specify operation on the newly allotted FM Channel 273A at Rosendale, as requested by SUNY pursuant to Section 1.420(g). SUNY pointed out that there is another resolution of this matter that would serve the public interest: the allotment of a second channel (FM Channel 255A) for the various mutually exclusive applicants on Channel 273A and the reservation of Channel 273A for noncommercial educational use, thus permitting the WFNP license to be modified as SUNY has requested. SUNY also stated that it would accept a license modification for WFNP on Channel 255A, permitting the Channel 273A applications to proceed on that channel.

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In its Opposition, SHU makes both procedural and substantive arguments.

On procedural grounds, SHU points out that the Petition should have been directed to the Commission. However, as SUNY pointed out in its "Erratum" filed September 19, 1997, the Petition is indeed directed to the Commission. By using the caption from an earlier document filed by SUNY in this proceeding, counsel for SUNY mistakenly addressed the pleading to the Mass Media Bureau. SUNY has already clarified that its pleading is indeed directed to the full Commission, which alone has the authority to reconsider the matter.<sup>1/</sup>

Substantively, SHU points to another pending Petition for Rulemaking, by SHU, which proposes the allotment of Channel 273A to Sharon, Connecticut as a substitute for the licensed Channel 277A facilities of Station WQQQ. This would allow Channel 277A to be used at North Canaan, Connecticut. To make this possible, SHU seeks to use Channel 255A for the pending Channel 273A applicants at Rosendale. This option would make it impossible to effectuate the solution for Rosendale put forth by SUNY in its Petition.

SUNY intends to file comments in the Sharon/North Canaan rule making proceeding.<sup>2/</sup> Suffice it to say, however, that the Rosendale proceeding has priority over the Sharon/North Canaan proceeding by virtue of the fact that SUNY proposed the use of both Channels 273A and

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<sup>1/</sup> Neither of Sections 1.106 and 1.429, which govern petitions for reconsideration, impose a specific requirement concerning pleading captions and addressees. The rules merely state that petitions requesting reconsideration of a final Commission action *will be acted upon* by the Commission. In similar contexts, the Commission has determined that a procedural mistake that does not have any substantive impact on the parties' rights will not serve as a basis for dismissing a petition or disregarding its substantive merits. See U.S. West Communications, Inc., 10 FCC Rcd 12592, 12593 (1995).

<sup>2/</sup> Notice of Proposed Rule Making and Order to Show Cause, MM Docket No. 97-178 (RM-8329 and RM-8739) (released August 15, 1997) ("*Sharon/North Canaan NPRM*").

255A, and that prospective use was "cut off" from counterproposals (including a defective earlier one by SHU), long before SHU's current petition for rulemaking was filed. Therefore, SUNY's view is that the Commission must complete review of the Rosendale proceeding at issue in SUNY's Petition, on its merits, prior to and without consideration of the SHU proposal for Sharon and North Canaan. Clearly, the FCC staff is of the same view, as it conditioned its action in the Sharon/North Canaan proceeding on the resolution of SUNY's Petition. *See Sharon/North Canaan NPRM*, at n.1.

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September 25, 1997

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing "Consolidated Reply" was served this 25th day of September, 1997, by hand delivery or First Class United States mail, postage prepaid, upon the following:

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